

Senate Bill 19

By: Senators Whitehead, Sr. of the 24th, Williams of the 19th, Goggans of the 7th, Chance of the 16th, Hill of the 4th and others

**AS PASSED**

AN ACT

To amend Code Section 32-6-170 of the Official Code of Georgia Annotated, relating to the authority of the Department of Transportation to pay costs of removal, relocation, or adjustment of certain utility facilities necessitated by construction of public roads, so as to allow the department to pay or participate in the payment of the costs of the removal, relocation, or adjustment of certain utility facilities of a public utility that is publicly, privately, or cooperatively owned where the cost of removal, relocation, or adjustment is deemed to be in the public interest and the work is to be performed by the department's contractor; to amend Code Section 32-6-171 of the Official Code of Georgia Annotated, relating to the authority of the department to order the removal, relocation, or adjustment of utility facilities occupying any part of the public road system, so as to provide that a utility that fails to remove, relocate, or adjust a facility in a timely manner shall be responsible to the department and its contractors for failure to comply; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Code Section 32-6-170 of the Official Code of Georgia Annotated, relating to the authority of the Department of Transportation to pay costs of removal and relocation of certain utility facilities necessitated by construction of public roads, is revised as follows:

"32-6-170.

(a) The department is authorized to pay or participate in the payment of the costs of removing, relocating, or adjusting any of the following facilities or any component part thereof if they are owned by a municipal corporation, county, state agency, or by an authority created under the laws of Georgia pertaining to public utilities, without regard to whether such facilities were originally installed upon rights of way of the state highway system, a county road system, or a municipal street system, where such removal, relocation, or adjustment is made necessary by the construction or maintenance of any public road by the department: water distribution and sanitary sewer facilities and systems

for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, steam, waste, and storm water not connected with highway drainage, including fire and police signals, traffic-control devices, and street lighting systems.

(b) The department is authorized to pay or participate in the payment of the costs of removing, relocating, or making necessary adjustments to any of the following facilities or any component part thereof if they are owned by a public utility that is publicly, privately, or cooperatively owned, without regard to whether such facilities were originally installed upon rights of way of the state highway system, a county road system, or a municipal street system, where the department has made the determination that (i) such payments are in the best interest of the public and necessary in order to expedite the staging of the project; and (ii) the costs of the removal, relocation, or adjustment of such facilities are included as part of the contract between the department and the department's roadway contractor for the project, provided that such removal, relocation, or adjustment is made necessary by the construction or maintenance of a public road by the department: water distribution and sanitary sewer facilities and systems for producing, transmitting, or distributing communications, power, electricity, light, heat, gas, steam, waste, and storm water not connected with highway drainage, including fire and police signals, traffic-control devices, and street lighting systems.

(c) As to municipal corporations, counties, state agencies, authorities controlled by such municipal corporations, counties, or other state agencies, and public utilities that are publicly, privately, or cooperatively owned, the department is authorized to waive provisions in existing permits and agreements in conflict with this article.

(d) The costs of removing, relocating, or adjusting the facilities listed in subsection (a) of this Code section, which costs the department is authorized to pay or participate in by this Code section, shall be limited to the costs of removing, relocating, or adjusting those facilities which are physically in place and in conflict with proposed construction and, where replacement is necessary, to the costs of replacement in kind. That proportion of the costs representing improvement or betterment in a facility shall be excluded from the costs eligible for payment or participation by the department under this Code section, except to the extent that such improvement or betterment is made necessary by the public road construction or maintenance.

(e) All costs incurred by the department under this Code section shall be deemed to be a part of the costs of the project requiring removal, relocation, or adjustment of any of the facilities listed in subsections (a) and (b) of this Code section."

**SECTION 2.**

Code Section 32-6-171 of the Official Code of Georgia Annotated, relating to the authority of the department to order the removal and relocation of utility facilities occupying any part of the public road system, is revised as follows:

"32-6-171.

(a) Any utility using or occupying any part of a public road which the department has undertaken to improve or intends to improve shall remove, relocate, or make the necessary adjustments to its facility when, in the reasonable opinion of the department, the facility constitutes an obstruction or interference with the use or safe operation of such road by the traveling public or when, in the reasonable opinion of the department, the facility will interfere with such contemplated construction or maintenance.

(b) Whenever the department reasonably determines it necessary to have a utility facility removed, relocated, or adjusted, the department shall give to the utility at least 60 days' written notice directing it to begin the physical removal, or relocation, or adjustment of such utility obstruction or interference. If such notice is part of a highway improvement project, it is normally provided at the date of advertisement or award. However, prior to the notice directing the physical removal, relocation, or adjustment of a utility facility, the utility and the department shall adhere to the department's utility relocation procedures for public road improvements which shall include but not be limited to the following:

(1) The submission by the department to the utility of a letter and set of preliminary plans for the proposed highway improvement project and the utility's submission to the department of written confirmation acknowledging receipt of the plans;

(2) The utility's submission to the department of plans showing existing and proposed locations of facilities within a reasonable time as specified by the department in the letter required under paragraph (1) of this subsection; provided, however, that the time specified by the department shall not be sooner than 30 days and shall not be greater than 120 days. If the utility fails to submit to the department the plans within the allotted 120 days, the department may no longer be required to pay the costs of removal, relocation, or adjustment as prescribed in subsection (b) of Code Section 32-6-170 even if those costs had previously been included in the contract between the department and the department's contractor; instead, such costs shall be borne by the utility; and

(3) The utility's submission shall include with the plans a work plan in a manner and time frame established by the department's written procedures and instructions.

If the utility does not thereafter begin removal, relocation, or adjustment within the time specified in the work plan, the department may give the utility a final notice directing that

such removal, relocation, or adjustment shall commence not later than ten days from the receipt of such final notice. If such utility does not, within ten days from receipt of such final notice, begin to remove, relocate, or adjust the facility or, having so begun removal, relocation, or adjustment, thereafter fails to complete the removal, relocation, or adjustment within the time specified in the work plan, the department may exercise its right to obtain injunctive relief as provided in Code Section 32-6-175. If utility removal, relocation, or adjustment work is found necessary after the letting date of the highway improvement project, the utility shall provide a revised work plan within 30 calendar days after becoming aware of such additional work or upon receipt of the department's written notification advising of such additional work. The utility's revised work plan shall be reviewed by the department to ensure compliance with additional work.

(c) In addition to the foregoing, the owner of the utility may be responsible for and liable to the department or its contractors for documented damages resulting solely from failure on the part of the utility to comply with requirements of the submitted and approved work plan under the control of the utility. If the utility owner fails to provide a work plan or fails to complete the removal, relocation, or adjustment of its facilities in accordance with the work plan approved by the department, then the utility owner may be liable to the contractor for delay costs incurred by the contractor and approved by the department which are caused by or which grow out of the failure of the utility owner to carry out and complete its work in accordance with the approved work plan or in a timely and reasonable manner if a work plan or revised work plan was not submitted. Upon notification in writing by the department or its contractors that the utility is liable for damages or delay costs, the utility company shall have 45 days from receipt of such letter to either pay the amount of the damages or delay costs to the department or its contractors or to request mediation as provided in subsection (d) of this Code section.

(d) The department's utility relocation procedures shall include, in addition to the provisions set forth in subsection (b) of this Code section, provisions for the establishment of mediation boards to hear and decide disputes that may arise between the department and the utility concerning (i) a work plan or revised work plan that has been submitted by the utility but not approved by the department; (ii) a contractor's claim for delay costs or other damages related to the utility's removal, relocation, or adjustment of its facilities; and (iii) any other matter related to the removal, relocation, or adjustment of the utility's facilities pursuant to this Code section. Such procedures shall include but not be limited to the following:

- (1) Each mediation board shall consist of one mediator who shall be designated by the department, one mediator who shall be designated by the utility, and an independent mediator who shall be mutually selected by the department's designee and the utility's designee and shall serve as the presiding officer of the mediation board;
  - (2) The mediators shall hold a hearing with regard to each dispute that is submitted to the mediation board for resolution, shall provide notice of the hearing to each party involved in the dispute, and shall afford each party an opportunity to present evidence at the hearing; provided, however, that unless the parties otherwise agree, the provisions of Code Sections 50-13-13, 50-13-14, and 50-13-15, relating to proceedings in a contested case under the Georgia Administrative Procedure Act, shall not apply to the hearing before the mediation board;
  - (3) The mediators shall decide each issue presented to the mediation board by a majority vote of the mediators;
  - (4) The mediators shall issue a final decision in writing with regard to each dispute that is submitted to the mediation board for resolution and shall serve a copy of the final decision on each party involved in the dispute; and
  - (5) All final decisions of the mediation board shall be subject to de novo review in the Superior Court of Fulton County by way of a petition for judicial review filed by the department or the utility within 30 days after service of the final decision.
- (e) The department shall promulgate reasonable regulations governing the mediation board, including the procedural rules governing the mediation of a contested case and the creation of a list of qualified mediators. The department shall consult with the Georgia Utilities Coordinating Council in the development of these regulations, and these regulations shall be adopted by the department on or before January 1, 2008."

### **SECTION 3.**

This Act shall become effective on July 1, 2007.

### **SECTION 4.**

All laws and parts of laws in conflict with this Act are repealed.